

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Michael J. Seals et al.

Title: TECHNIQUE FOR OUTPUT POWER  
DITHERING FOR IMPROVED TRANSMITTER  
PERFORMANCE

Appl. No.: 10/779606

Filing Date: 2/18/2004

Examiner: Barry W. Taylor

Art Unit: 2617

Confirmation 8882

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR  
PATENT APPLICATION UNDER 37 C.F.R. §1.705(b)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants have calculated PTA for the captioned patent application and have determined that the patent is entitled to 1010 days of Patent Term Adjustment, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702, 1.703 and 1.704:

(a) Total PTO delay: 1038 days

(b) Total Applicant delay: 28 days

Final PTA Determination under 37 CFR §1.703(f): 1010 days

In accordance with 1.705(b)(2)(ii), the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are clearly represented in the attached PTA Calculation.

The relevant dates where the applicant is not in agreement with the PTO's determination are discussed in more detail below.

The above discrepancy occurs as a result of the PTO's failure to include 408 days of additional PTA accumulated in applicant's favor based on the provisions of 37 C.F.R. §§ 1.702(b)(1) and 1.703(b)(1), wherein PTA begins to accumulate in applicant's favor on the day after the commencement of three years from the filing date. Therefore, the 408-day discrepancy falls under the 3 year rule.

A Request for Continued Examination was filed in the application prior to allowance, and Patent Term Adjustment accordingly stopped accruing under 37 C.F.R. §1.703(b) on April 2, 2008. This PTA component was accordingly "ripe" at the time of allowance and accordingly could have been incorporated into the PTO's determination of PTA.

37 C.F.R. §1.705(d) states that "Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues." As the above-identified issue could arguably be raised under paragraph (b), the applicant is filing this request for reconsideration under an abundance of caution, in the knowledge that the PTO does not include patent term adjustment resulting from 37 C.F.R. §1.703(b) in its PTA calculations at allowance, even if PTA has stopped accruing due to the filing of an RCE.

In accordance with §1.705(b)(2)(iv)(A), the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704 are clearly represented in the attached PTA Calculation.

Applicants therefore respectfully request that the patent be accorded 1010 days PTA.

Fees in the amount of \$200.00 set forth in 37 C.F.R. § 1.18(e) to cover the fee for this request are being paid by credit card via EFS-Web.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.705, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date November 11, 2010

By



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## Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088245-2594  
 Application Number: 10/779606  
 Patent Number: N/A

|             | Event Description                                       | Event Date | Days from Filing | PTO Days | Applicant Days |
|-------------|---|------------|------------------|----------|----------------|
| Edit Delete | Application Filing Date                                 | 02/18/2004 | 0                |          |                |
|             | 14 month From Application date                          | 04/18/2005 | 425              |          |                |
| Edit Delete | Non-Final Office Action                                 | 01/08/2007 | 1,055            | 630      |                |
|             | 3 Year Period Starts                                    | 02/18/2007 | 1,096            |          |                |
|             | Non-Final Office Action + 3 months                      | 04/08/2007 | 1,145            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rcv'd at PTO               | 05/06/2007 | 1,173            |          | 28             |
| Edit Delete | Non-Final Office Action                                 | 07/26/2007 | 1,254            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rcv'd at PTO               | 10/24/2007 | 1,344            |          |                |
| Edit Delete | Final Office Action                                     | 01/07/2008 | 1,419            |          |                |
|             | 3 Year Period Stopped                                   | 04/01/2008 | 1,504            | 408      |                |
| Edit Delete | Request For Continued Examination (including amendment) | 04/02/2008 | 1,505            |          |                |
| Edit Delete | Non-Final Office Action                                 | 06/24/2008 | 1,588            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rcv'd at PTO               | 07/25/2008 | 1,619            |          |                |
| Edit Delete | Final Office Action                                     | 10/23/2008 | 1,709            |          |                |
| Edit Delete | Request For Continued Examination (including amendment) | 01/23/2009 | 1,801            |          |                |
| Edit Delete | Non-Final Office Action                                 | 01/30/2009 | 1,808            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rcv'd at PTO               | 04/30/2009 | 1,898            |          |                |
| Edit Delete | Final Office Action                                     | 08/10/2009 | 2,000            |          |                |
| Edit Delete | Request For Continued Examination (including amendment) | 11/10/2009 | 2,092            |          |                |
| Edit Delete | Non-Final Office Action                                 | 11/20/2009 | 2,102            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rcv'd at PTO               | 02/19/2010 | 2,193            |          |                |
| Edit Delete | Final Office Action                                     | 05/14/2010 | 2,277            |          |                |
| Edit Delete | Final Office Action Response Received at PTO            | 07/06/2010 | 2,330            |          |                |
| Edit Delete | Advisory Action   | 07/12/2010 | 2,336            |          |                |
| Edit Delete | Request For Continued Examination (including amendment) | 08/06/2010 | 2,361            |          |                |
| Edit Delete | Request For Continued Examination (including amendment) | 08/06/2010 | 2,361            |          |                |

|             |                             |            |             |
|-------------|-----------------------------|------------|-------------|
| Edit Delete | Notice of Allowance         | 08/19/2010 | 2,374       |
|             | Projected Patent Grant Date | 03/01/2011 | 2,568       |
|             |                             | Totals:    | 1,038       |
|             |                             | PTA:       | 28<br>1,010 |

Created and maintained by  
**FOLEY**  
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Version: 3.02.09

LOGIN: Linda Anderson

IP: 10.24.4.21

Foley &amp; Lardner LLP